

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items which will be resold. See the enclosed copy of 86 Ill. Adm. Code 130.1415. (This is a GIL).

April 23, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated March 8, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

We are currently getting setup to deliver a product into your state through a representative and a company that is already registered in your state. All of our sales are wholesale to this representative and we have a resale number from them. I need to know if we need to be registered in your state to wholesale there and if so what application needs to be filled out? We are a Utah Corporation registered in the state of Utah.

I can be contacted at #### or an application sent to me at:

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. 35 ILCS 120/2 (1996 State Bar Edition). If a business makes only sales at wholesale, it generally does not need to register with the Department of Revenue nor maintain files of resale certificates. See Dearborn Wholesale Grocers, Inc. v. Whitler, 82 Ill.2d 471, 413 N.E.2d 370 (1980).

If your corporation makes retail sales in Illinois, it is required to register with the Department of Revenue and maintain a file of resale certificates. We do not clearly understand the nature of your intended activities in Illinois. We hope the following information will be helpful to you in determining your tax obligations.

#### ILLINOIS RETAILERS

Assuming a delivery in Illinois, Illinois retailers are anyone who either accepts purchase orders in Illinois or who sells items of tangible personal property which are located in Illinois at the time of sale. See the enclosed copy of 86 Ill. Adm. Code 130.605(a).

#### OUT-OF-STATE USE TAX COLLECTORS

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (see 86 Ill. Adm. Code 150.201(i), enclosed) must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code 150.801(c), enclosed. Please note that out-of-State sellers with any kind of agent in Illinois (not just sales or lease agents) are required to register as out-of-State Use Tax collectors. If a person or entity has no contact with Illinois, it does not fall within the definition of a "retailer maintaining a place of business in this State," and it need not register as an out-of-State Use Tax collector.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's sales tax laws. The Supreme Court has set out a two-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due Process will be satisfied if the person or entity purposely avails himself or itself of the benefits of an economic market in a forum state. *Id.* at 1910. The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause.

A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative and it is immaterial for tax purposes that the representative's presence is temporary.

#### SALES FOR RESALE

Sellers required to collect Illinois tax must either charge tax or document exemptions when they make deliveries in Illinois. In order to document the fact that their sales are for resale, the sellers are obligated by Illinois to obtain valid Certificates of Resale from their purchasers. See the enclosed copy of 86 Ill. Adm. Code 130.1405. Certificates of Resale must contain all of the information set out in Section 130.1405(b). A sale shall be made tax-free on the ground of being a sale for resale if the purchaser has an active registration number or resale number from the Department and furnishes that number to the seller in connection with certifying to the seller that any sale to such purchaser is nontaxable because of being a sale for resale. 35 ILCS 120/2c (1996 State Bar Edition). Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller's sales are sale for resale, or that a particular sale is a sale for resale.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items which will be resold. So long as the person or entity does not act as an Illinois retailer and, so long as it does not fall under the definition of a "retailer maintaining a place of business in this State", its sales to Illinois customers are not subject to Illinois Retailers' Occupation Tax

liability and it cannot be required to act as a Use Tax collector. So long as this is true, it qualifies for a resale number which does not require the filing of tax returns with the Department. The requirements for obtaining a resale number are set out in 86 Ill. Adm. Code 130.1415, enclosed.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton  
Associate Counsel

TDC:msk  
Enc.